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April 20, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: MM Docket 94-143

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith on behalf of Busse Broadcasting Corporation, licensee of television station KOLN-TV, Lincoln, Nebraska, and its satellite KGIN-TV, Grand Island, Nebraska, is an original and four (4) copies of its Application for Review in the above-referenced proceeding.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely,

Neal J. Friedman
Neal J. Friedman
Counsel for
Busse Broadcasting Corporation

Enclosures

cc: Certificate of Service

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Amendment of Section 73.606(b),) MM Docket No. 94-143
Table of Allotments,)
Television Broadcast Stations.)
(Albion, Nebraska))

TO: The Commission

DOCKET FILE COPY ORIGINAL

APPLICATION FOR REVIEW

Busse Broadcasting Corporation ("Busse"), licensee of Television Station KOLN-TV, Lincoln, Nebraska and its satellite, KGIN-TV, Grand Island, Nebraska, by its attorneys and pursuant to Section 1.115(d) of the Rules of the Commission, hereby submits its application for review of the *Report and Order* ("Report and Order"), DA 95-474 (released March 21, 1995) in the above-captioned proceeding. In support thereof, the following is shown:

1. The *Report and Order* was issued in response to a *Notice of Proposed Rule Making* ("NPRM") in this proceeding, 9 FCC Rcd 7315 (1994), which proposed to allot Channel 24+ to Albion, Nebraska in order to accommodate Citadel Communications Company, L.P., ("Citadel") and Fant Broadcasting of Nebraska, Inc. ("Fant"), which filed mutually exclusive applications for Channel 18 at Albion. Allocation of Channel 18 at Albion would permit Citadel to relocate its Channel 8 facility at Albion to Lincoln, Nebraska. See *Albion, Lincoln and Columbus, Nebraska*, 6 FCC Rcd 2876

(1993). Busse's application for review of that decision is still pending before the Commission.

2. No action should be taken on the instant rulemaking until the Commission has decided Busse's Application for Review of *Albion, Lincoln and Columbus, Nebraska, supra*. Because the Channel 18 allocation at Albion is still subject to review by the Commission, the arguments Busse made against the Channel 18 allocation must be transferred to the instant proceeding and considered in this context as well. Accordingly, Busse has attached its Petition for Reconsideration in MM Docket 91-304 filed on June 3, 1993 as Exhibit 1 and it is incorporated herein by reference.

3. In *Albion, Lincoln and Columbus, Nebraska, supra*, the staff stated: "Grant of this petition for rule making is premised on Citadel's pledge that it will file an application to operate Channel 18 at Albion as a satellite of its ABC affiliate, Station KCAU, Sioux City, Iowa. Were it not for this pledge, we would not consider granting this proposal." *Report and Order* at 2878 (emphasis supplied).

4. The *Report and Order*, which would permit Citadel to amend its pending application for a construction permit on Channel 18 at Albion (FCC File No. BPCT-930726KH) to specify Channel 24+, imposes no requirement of ABC affiliation for Citadel on the new channel. The Allocation Branch could not have meant to drop the ABC affiliation requirement that it imposed on Channel 18 when it granted the allocation for Channel 24+ as the stated purpose of *the NPRM* was to accommodate the

mutually exclusive applications of Citadel and Fant and other possible expressions of interest.

5. The *Report and Order* treated Busse's other objections in summary fashion. For example, at para. 6 the *Report and Order* dismisses Busse's argument that the allotment of Channel 24+ to Albion will have no effect on the coming conversion to a Digital Television System and the massive switch of frequencies that will result. The *Report and Order* states, without any supporting data, that the allotment of a second UHF channel at Albion will have no effect on the proposed allocation scheme. Something more detailed than an unsupported conclusory statement in a staff opinion would appear to be warranted in light of the high priority the Commission and the broadcast industry have placed on the conversion to the Digital Television System.

6. Similarly, Busse's argument that the allotment of two full-service UHF channels to a tiny community that cannot support even one station makes no economic sense is dismissed para. 5 of the *Report and Order* with a brief reference to a 1989 Commission decision. In *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1989), *recon. denied*, 4 FCC Rcd 2276 (1989), the Commission determined that economic issues were not relevant in a licensing or allotment context. The Commission's 1991 staff study of the television industry painted a bleak future economic picture. *Broadcast Television in a Multi-Channel Marketplace*, 6 FCC Rcd 3996 (1991). The authors wrote:

Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now. Although broadcasting will remain an important component of the video mix, small market stations, weak independents in larger markets, and UHF independents in general will find it particularly difficult to compete, and some are likely to go dark.

7. The staff, of course, could not overturn the Commission's decision, but the Commission now has the opportunity to take cognizance of the dramatic changes that have occurred in the broadcast industry since 1989 to review its stated policy. While this may not be the proper forum of a full review of Commission policy, the Commission could use this opportunity to take cognizance of the obvious and undisputed fact that Albion cannot support two television stations. Citadel has stated previously that "Albion is not capable of supporting a full-service station." See Citadel's Supplement to Petition for Rule Making, filed July 30, 1991 at p.5.

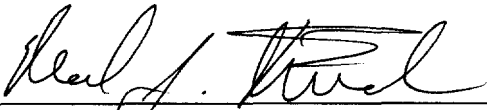
8. This is a complex proceeding now involving three allotments in two communities. Significant policy issues are raised. It is clear that the sole purpose of the Channel 24+ allotment is to accommodate mutually exclusive applications. Allotment of additional scarce spectrum is not the normal mechanism for resolving such applications and it should not be the case here. These applications should be treated no differently than any others before the Commission.

For the forgoing reasons, Busse Broadcasting Corporation respectfully requests that the Commission reverse the determination to allot Channel 24+ to Albion, Nebraska and that it not amend the Television Table of Allotments as proposed in the *Notice* in this proceeding or in the Channel 18 proceeding.

Respectfully Submitted,

Busse Broadcasting Corporation

By



Vincent A Pepper
Neal J. Friedman

Its Attorneys

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April 20, 1995

EXHIBIT 1

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June 3, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, DC 20554

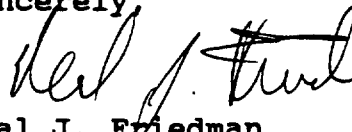
Re: MM Docket No. 91-304

Dear Ms. Searcy:

Transmitted herewith on behalf of Busse Broadcasting Corporation, licensee of KOLN-TV, Lincoln, NE and its satellite, KGIN-TV, Grand Island, NE, is an original and four (4) copies of its Petition for Reconsideration of the staff action pursuant to delegated authority in the above-referenced proceeding.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely,



Neal J. Friedman

Enclosures

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket 91-304
Table of Allotments)	RM-7787
Television Broadcast Stations)	
(Albion, Lincoln and Columbus,)	
Nebraska))	

TO: Chief, Mass Media Bureau

PETITION FOR RECONSIDERATION OF BUSSE BROADCASTING CORPORATION

Vincent A Pepper
Neal J. Friedman
Its Attorneys

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June 3, 1993

SUMMARY

Citadel Communications Co., Ltd. seeks to substitute Channel 8 at Lincoln, Nebraska, for Channel 8 at Albion, Nebraska. The Report and Order granted the petition, allocating Channel 8 to Lincoln, Nebraska, with a site restriction of 42.8 km northwest to avoid shortspacing to KCCI-TV, Channel 8, Des Moines, Iowa, and the Kansas City freeze area. Busse engaged an airspace consultant who determined that the proposed 1500-foot tower to serve the new Channel 8 at Lincoln could not be constructed at the Commission's hypothetical location. Busse's airspace consultant determined that the FAA would not approve a structure of more than 538 feet, which would not put the required 80 dBu signal over Lincoln. At the rule making stage, Citadel must demonstrate the existence of at least a theoretical site before its petition can be granted.

The Report and Order glosses over the significant issue of prohibited overlap between Citadel's KCAU-TV, Sioux City, Iowa, its proposed Channel 18 at Albion and its proposed Channel 8 at Lincoln. The cases cited in the Report and Order are inapposite. Additionally, none of the cited cases involve the loss of service that would result if the Citadel petition were granted. Moreover, the suggestion that the overlap could be cured by a divestiture is fallacious. A condition of the allocation is that Citadel apply for and build Channel 18 at Albion as a satellite of its co-owned Sioux City station. It, therefore, could not divest the Sioux City station. Thus, the only station it could divest would be the very facility it seeks to construct at Lincoln. The waiver proposal is equally unworkable as neither Citadel nor the Report and Order have

addressed the question of whether an overlap among two stations and a satellite, all co-owned, would be permissible.

The Report and Order conditions grant of the Citadel petition on a commitment that it construct and operate Channel 18 at Albion. This is a meaningless gesture. No Channel 18 facility could fully replicate the service now provided by Channel 8 at Albion. Additionally, Citadel is free to build the minimum facilities permitted under the Commission's Rules, which would result in a substantial loss of service at Albion. The Commission should, at the very least, require Citadel to replicate as nearly as technically possible the deleted service provided by Channel 8 at Albion.

Additionally, the purported service gains to underserved areas is illusory. The Report and Order failed to take into account non-commercial stations. When these stations are included, the gains to underserved areas are minimal. Moreover, the underserved areas are well served by translators. The overall loss of service at Albion would be substantial.

The Report and Order does not address the question of whether the Citadel proposal complies with the Commission's established policy for community-of-license changes. There is no net service benefit that would result from the Citadel proposal. The Commission has previously held that disruption of existing service, such as would occur if the Channel 8 facility at Albion were deleted, substantially offsets any purported gains in service at Lincoln.

The preferred solution would be for Citadel to activate one of the two vacant, unapplied-for channels at Lincoln. This would

provide Citadel with the Lincoln facility it seeks without any disruption in service at Albion.

Accordingly, the Citadel petition should be denied.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. 91-304
Table of Allotments,)	RM-7787
TV Broadcast Stations,)	
(Albion, Lincoln and Columbus,)	
Nebraska))	

TO: Chief, Mass Media Bureau

PETITION FOR RECONSIDERATION

Busse Broadcasting Corporation ("Busse"), licensee of KOLN-TV, Lincoln, Nebraska and its satellite, KGIN-TV, Grand Island, Nebraska, by its attorneys and pursuant to Section 1.429 of the Rules of the Commission, hereby petitions for reconsideration of the Report and Order in MM Docket 91-304, DA 93-415 (released April 28, 1993) ("Report and Order").^{1/} The Report and Order granted the Petition for Rulemaking filed on behalf of Citadel Communications Co., Ltd. ("Citadel") seeking to substitute UHF Channel 18 for VHF Channel 8 at Albion, Nebraska and allot VHF Channel 8 at Lincoln, Nebraska.^{2/} In support thereof the following is shown:

^{1/} The Report and Order was published in the Federal Register on May 4, 1993 (58 Fed. Reg. 26525), thus Busse's petition is timely filed.

^{2/} The instant Petition is proper under § 1.429(b)(1) in that it relies on facts and circumstances that have changed since the last opportunity to present them to the Commission (the use of 1990 Census data in the Report and Order) and under § 1.429(b)(2) in that it relies on facts unknown to the Petitioner at the last opportunity to present them to the Commission (the new site for Channel 8 at Lincoln first proposed in the Report and Order).

I. THE COMMISSION'S PROPOSAL IS UNWORKABLE

1. The Report and Order at ¶11 allotted Channel 8 to Lincoln^{3/} with a site restriction of 42.8 km northwest to avoid shortspacing to KCCI-TV, Channel 8, Des Moines, Iowa and the Kansas City freeze area. Busse engaged John P. Allen, a recognized airspace consultant, whose qualifications are well-known to the Commission, to determine whether a 1500-foot AGL tower^{4/} could be constructed at the Commission's proposed site in accordance with FAA regulations. Mr. Allen's affidavit, which is attached as Exhibit 1, concludes that the proposed tower would exceed the standards of Subpart C of Part 77 of the Federal Aviation regulations in four instances.

2. The most serious of these, according to Mr. Allen, concerns §77.23(a)(3). Construction of the proposed tower would require an increase in the final approach course altitude for aircraft using the NDB Runway 16 at Seward Municipal Airport. This would reduce the utility of the airport during periods of low cloud ceilings and/or reduced visibility. Mr. Allen believes that the FAA would find that any reduction of the utility or availability of an airport would be sufficient for the issuance of a determination of hazard to air navigation for the proposed structure.

^{3/} For purposes of clarity, the existing KCAN-TV, Channel 8, Albion, Nebraska is alternately referred to herein as "Albion-8"; the proposed new Channel 18 at Albion is alternately referred to as "Albion-18"; and the proposed KCAN-TV, Channel 8 at Lincoln, Nebraska is alternately referred to as "Lincoln-8".

^{4/} Citadel's Supplement to Petition for Rulemaking, dated July 30, 1991, proposed a structure at 454 meters (1489 feet) AGL.

3. Mr. Allen further concludes that the FAA would only approve a tower of not more than 538 feet AGL (2049 feet AMSL). Neil Smith, Busse's technical consultant, whose qualifications are also well known to the Commission, has determined that such a structure at the location the Commission proposes would not place a 77 dBu signal over Lincoln as required by §73.685(a) of the Rules of the Commission. Mr. Smith's report is attached as Exhibit 2. The site restriction mandated in the Report and Order prevents Citadel from moving any closer to Lincoln. Thus, there is no way that Citadel could construct a facility that meets the requirements of 73.685(a) at the Commission's proposed site.

4. At the rulemaking stage there must at least be a theoretical site that meets the Commission's technical rules. Beverly Hills, Chiefland, Holiday, Micanopy and Sarasota, Florida, 8 FCC Rcd 2197 (1993) at ¶6. See also Randolph and Brandon, Vermont, 6 FCC Rcd 1760, 1764, n.4 (1991) and Key West, Florida, 3 FCC Rcd 6423 (1988). The hypothetical site does not meet the Commission's requirements. Citadel must demonstrate the existence of at least a theoretical site before its petition can be granted.

II. CITADEL'S PROPOSAL VIOLATES THE MULTIPLE OWNERSHIP RULES

5. Busse and other commenters argued that grant of the Citadel petition would violate Section 73.3555 of the Rules of the Commission. The comments pointed out that there would be a prohibited overlap between Citadel's KCAU-TV, Sioux City, Iowa, its proposed Channel 18 at Albion and its proposed Channel 8 at Lincoln. The Report and Order glosses over this significant issue by

suggesting that it could be addressed at the application stage by means of a waiver or divestiture proposal. Report and Order at ¶8.

6. The prohibited overlap cannot be dismissed in such a cavalier fashion. The Chief, Allocations Branch merely hands off the issue to the Chief, Television Branch. This matter is properly resolved at the allocation stage. Otherwise the Commission may find itself backed into a corner by the unilateral actions of one branch of the Mass Media Bureau that may not be consistent with the views of another branch.

7. Moreover, the cases cited in the Report and Order are inapposite. Morristown, New Jersey, 7 FCC Rcd 6976 (1990) does not stand for the proposition that a prohibited overlap can be resolved at the application stage. That case involved an alleged violation of former rule section 73.3555(e) limiting parties to cognizable ownership interests in not more than 12 AM or FM stations. At issue in that case was whether pending applications for 14 FM stations violated the rule. In that instance the Commission held that the issue could be resolved at the application stage by the dismissal of one or more of the pending applications, which could be accomplished without any difficulty. Resolution of the contour overlap is much more complex. The Report and Order at ¶8 suggests either a waiver, which may or may not be granted, or a divestiture, which is not feasible. See ¶¶ 12-13, infra.

8. In Living Faith Ministries, 7 FCC Rcd 4245 (1992), the Commission granted a construction permit to an applicant where there would be an overlap with a co-owned satellite upon a showing that

the applicant had met the three-pronged test set forth in Television Satellite Stations, 6 FCC Rcd 4212 (1991). In the instant proceeding, Citadel's proposed Albion-18 would have a prohibited overlap with two co-owned stations, to only one of which Albion-18 would be a satellite. Moreover, Citadel has failed to make the showing required in Television Satellite Stations.

9. In Sidney Warner, 64 RR2d 1774 (1988), the Commission approved the acquisition of a second station with prohibited overlap of less than two percent of the population combined with a pledge from the acquiring entity that it would broadcast local news and public affairs programming, a pledge that is noticeably lacking in the Citadel proposal. Indeed, Citadel initially pledged to build and operate Channel 18 at Albion only if no one else stepped forward, which should provide the best indication of the depth of its commitment to Albion.

10. The Commission in its decision in Central Minnesota Television, Inc., 2 FCC Rcd 6730 (1987) said the facts of that case were "unique." Id. at 6732. It noted that the applicant had made the showing required by note 5 to Section 73.3555 of the Rules and cited the adverse impact of the entry of a second station in the market and the shrinking ADI. The applicant in Central Minnesota, unlike Citadel, also pledged to maintain local news and public affairs programming.

11. It is also important to note that none of the cases cited in the Report and Order involved the loss of service that would result if the Citadel petition were granted. In sum, neither

Citadel nor the Report and Order have cited any cases in which the Commission has approved an overlap between two full-service stations and a satellite, coupled with a loss of service. See Section III. B. infra.

12. The suggestion in the Report and Order that the overlap could be cured by a divestiture is fallacious. To begin with, a condition of the allocation is that Citadel apply for and build Albion-18 as a satellite of co-owned KCAU-TV, Sioux City. It could not divest KCAU-TV and still operate Albion-18 as a satellite. Thus, the only station it could divest would be the very facility it seeks to construct at Lincoln!

13. The waiver proposal is equally unworkable. Of the population to be served by Lincoln-8, 4.1 percent would overlap Citadel's KCAU-TV at Sioux City and 1.9 percent would overlap Albion-18. These are relatively modest figures except when considered with the Albion-18/Lincoln-8 overlap. Mr. Smith's report calculates that 22 percent of the population served by Albion-18 would overlap with Lincoln-8. See Ex. 2 at Figure 2. Neither the Report and Order nor Citadel provide any authority for the creation of new overlap of this magnitude in a rulemaking. Although Citadel in its reply comments cites instances in which the Commission has approved overlapping contours between two stations, neither Citadel nor the Report and Order address the question of whether an overlap between two full-service stations and a satellite would be permissible.

III. THE CITADEL PROPOSAL IS NOT A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS.

A. The Requirement that Citadel Construct and Operate Channel 18 at Albion is an Empty Gesture

14. Although the Report and Order conditions grant of the Citadel petition on a commitment that it construct and operate Channel 18 at Albion, closer analysis will show this to be meaningless. The Report and Order does not specify what type of facility would have to be constructed. Section 73.614(a) of the Rules of the Commission requires a minimum power of -10dBk (100 watts) and no minimum antenna height. Section 73.685(a) requires only that stations on channels 14-69 place a minimum field strength signal of 80 dBu over their community of license. This would require only 200 KW at 1200 feet from the site proposed in the Report and Order. Thus, the present full-power Channel 8 facility at Albion (316 KW at 2000 feet HAAT) could conceivably be replaced by an underpowered facility that is more like an LPTV station. When the coverage of the present Albion-8 is compared to the minimum Albion-18 facility, the resulting loss of service is astonishing.

15. The present Albion-8 facility serves an area of 45,237 sq. km and 469,469 persons. If Citadel were to construct minimum facilities at its proposed site, it would serve only 12,778 sq. km and 32,468 persons. This represents a loss of service of 32,459 sq. km (72 percent) and 437,001 persons (93 percent). See Ex. 2 at Figure 6. As the Report and Order now stands, Citadel could construct a low-budget Albion-18 facility and reduce its service there to a virtual nullity. This overwhelming loss of service

cannot by any stretch be described as "a preferential arrangement of allotments."

16. Moreover, the Report and Order does not require that Citadel operate the Albion-18 facility for any specified period of time or what service it must provide. Citadel contended at p. 8 of its Supplement that it had been losing money at Albion. Such losses would hardly justify the expense of dismantling the present 2000-foot Albion-8 tower and constructing a new 1200-foot tower at another location for Albion-18. Moreover, the hypothetical site suggested in the Report and Order for Albion-18 is in a remote area. The cost of providing power and constructing an access road to the site could be prohibitive. Faced with this prospect and no requirement that it do anything more than build some sort of Channel 18 facility at Albion, Citadel could very well opt for construction of the minimum facilities at the least cost.

17. If the Commission is to permit substitution of Channel 18 for Channel 8 at Albion it must require that Citadel replicate as nearly as possible the deleted Albion-8 service. Even this approach would not cure the fundamental flaw in the Citadel proposal. There is simply no way to avoid some loss of service at Albion. Without a requirement that Citadel construct maximum facilities at Albion, there will be no assurance "that virtually all of the current viewers of Albion Channel 8 will experience no significant loss of network television service." Report and Order at ¶10. The more likely scenario is that a substantial number of the viewers of Albion Channel 8 will suffer a loss of network television service.

B. The Purported Service to Underserved Areas is Illusory

18. The Report and Order at ¶9 asserts that 27,000 persons will receive first or second service from the Albion-18 facility. As Mr. Smith notes in his report, he cannot find any support for figures so large. Even if there were no disagreement on the figures, they appear to be based solely on commercial services. In Channel 32 Broadcasting Company, 6 FCC Rcd 5188 (1991) the Commission held that, because non-commercial stations have an obligation to serve the public interest, they cannot be excluded from an analysis of existing service. Taking noncommercial stations into consideration, Mr. Smith finds the correct figures for first service are a mere 585 persons in 137 sq. km and second service to 6985 persons in 2833 sq. km. See Ex. 2 at Figures 2 and 3. These numbers do not include service from translators (including one licensed to Busse) providing network service.

19. The numbers are even more dramatic if Albion-18 were constructed with minimum facilities of 200 KW at 1200 feet as described above. Under those circumstances, there would be no first service and second service to merely 423 persons. That modest gain would be purchased at a cost of loss of first service to 315 persons and second service to 2290 persons. See Ex. 2 at Figures 5 and 6. The claimed service gains for Lincoln-8 cannot be justified against this loss of service.

C. Albion Would Suffer a Substantial Loss of Service

20. The Report and Order similarly glosses over the loss of service that would result from adoption of the Citadel proposal.

It notes at ¶9 that substitution of Channel 18 for Channel 8 at Albion would result in loss of service to an area of 8,729 sq. kilometers and 51,441 persons. It would also create a grey area of 42 square kilometers and 105 persons. This alone should be sufficient to justify denial of the Citadel petition. The Report and Order does not make clear what facilities were considered in this calculation. Citadel had once proposed 2.5 MW at 1200 feet HAAT for Albion-18. See Supplement to Petition for Rule Making, filed July 30, 1991. But, if Citadel were to construct the minimum facilities described above, an even greater area of 11,275 sq. km and 84,375 persons would not be served by either Albion-18 or Lincoln-8. See Ex. 2 at figure 6. No claimed service gain at Lincoln can outweigh this significant loss of service that would result from the substitution of Channel 18 for Channel 8 at Albion.

D. The Citadel Proposal Does Not Meet the Commission's Requirements for Changes in Community of License

21. The Report and Order curiously does not even address the issue of whether the Citadel proposal complies with the Commission's established policy for community of license changes. See Report and Order, Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989) ("Community Modifications I"), recon. denied, 5 FCC Rcd 7094 (1990) ("Community Modifications II"). The Commission's goal in relaxing its rules with regard to city of license changes was to permit licensees, primarily FM broadcasters, to upgrade their facilities without becoming involved in the risks of a comparative hearing. Community Modifications I, 4 FCC Rcd at 4872. The Commission established a

simple, straightforward standard for evaluating community of license changes: "If adoption of the proposed allotment plan would result in a net service benefit to the communities involved (that is, if the plan would result in a preferential arrangement of allotments), we will adopt the proposal." Id. at 4873 (emphasis supplied).

22. As demonstrated above, there is no "net service benefit" that will result from the Citadel proposal. The Report and Order at ¶9 justifies grant of the Citadel proposal on the supposition that there will be a gain of first and second service to 27,000 persons.^{5/} But, this is based on construction of unspecified facilities at a hypothetical site that has now been demonstrated as unworkable. The Report and Order does not even begin to take into account the very real likelihood that Citadel could construct minimal facilities at an entirely different location resulting in a much greater loss of service than the Report and Order contemplates and without the service gains it envisions. Indeed, such a facility would not only reduce Citadel's costs, but would also reduce or even eliminate the prohibited overlap with KCAU-TV, Sioux City and the proposed Lincoln-8 facility. While Citadel would gain a potentially valuable facility in Lincoln, the losers would be viewers in the area of Albion who would be deprived of service.

23. The Albion-Lincoln channel switch is directly on point with Amendment of Section 73.202(b). Table of Allotments, FM Broadcast Stations, (Eatonton, and Sandy Springs, Georgia and

^{5/} As noted in Section III. B., supra, the service gains are much smaller when non-commercial stations are included as is now required.

Anniston and Lineville, Alabama, 6 FCC Rcd 6580 (1991) ("Anniston").

In that proceeding the petitioner sought to reduce service to the smaller community of Anniston in favor of serving Sandy Springs, a suburb of the much larger community of Atlanta. The parallels are striking. In Anniston, the petitioner proposed to replace the Class C allotment at Anniston with an inferior Class C3 FM station that would serve 410,000 fewer person. Although the petitioner alleged gains in service, the Commission rejected the proposal and pointed out that, as in the instant proceeding, the gains in service "would be purchased at a cost, however." Id. at ¶ 29.

24. The Commission found in Anniston that the increased service to Sandy Springs, while appearing on its face to be a superior arrangement of new allotments, "an important qualitative element of the proposal is disruption to existing service, which counterbalances this consideration." Id. at ¶ 34. "That such a curtailment of service is not in the public interest is axiomatic." Hall v. FCC, 237 F.2d 567, 572 (D.C. Cir. 1956). In Community Modifications II the Commission wrote:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting of a channel from one community to another

5 FCC Rcd at 7097. "The weight to be accorded to the public's expectation is substantial." Anniston at ¶ 34. The Commission concluded that "the disruption to existing service that would be caused by grant of [the petitioner's] proposal substantially offsets

the purported gains." The gains claimed in Lincoln cannot be offset by the substantial loss and disruption of service in Albion.

25. Even using the uncorrected figures in the Report and Order at ¶9, the purely hypothetical gain of first and second service to 27,000 persons cannot be justified when the very real loss of service to nearly twice as many persons that would result from the elimination of Albion-8 is considered. Moreover, as demonstrated above, the gain and loss of service must be calculated based on a valid theoretical site for Lincoln-8 and a requirement that Citadel replicate as nearly as possible the deleted Albion-8 facilities. Surely, there can be no public interest benefit to be obtained from the allocation of Lincoln-8 when the cost in terms of disruption of service is so high. This is especially true when, as is shown below, there are two vacant and unapplied-for channels at Lincoln.

III. The Preferred Solution Would be for Citadel to Activate One of Two Vacant Channels at Lincoln.

26. In Anniston, supra, the Commission was faced with the difficult choice of providing service to one community at the expense of another. It could not provide new service in the Sandy Springs/Atlanta market without downgrading service in Anniston. The Commission need not make such a hard choice in the instant proceeding. Denial of Citadel's petition would not result in any disruption of service at Albion and would not foreclose new service to Lincoln. Unlike the facts of Anniston, Citadel or any other party